IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2757 OF 2004

Iftekhar Usman Shaikh)
adult, Indian Inhabitant,)
age 24 years, residing at)
35 Tank Street, 1st floor,)
Room No.7, Wasil Khan Marg,)
Nagpada, Mumbai 400 008.)...Petitioner

Versus

1. State of Maharashtra)

2. Commissioner of Police,)
Crawford Market, Mumbai.)

3. The Commissioner of Police)
Hyderabad, Andhra Pradesh.)

4. Shri Mohd. Azeem Ansari)
Plot No.36, B-Road No.12,)
M.L.A.Colony, Banjara Hill,)
Hyderabad.)...Respondents.

Mr.Parvez Ubharay for petitoner
Mr.D.S.Mhaispurkar, APP for respondent Nos.1 to 3
Mr.Ganesh Gole for Respondent no.4

WITH

CRIMINAL WRIT PETITION NO.221 OF 2005

1. Mohamed Azeem Anzari)
age 48 yrs.)

2. Tasneem Farzana)
age 47 yrs.)
residing at Plot No.36/B)
M.L.A. Colony, Banjara Hills)
Hyderabad.)...Petitioners

Versus

1. Senior Inspector of Police)
Sir J.J.Marg Police Station)
Mumbai.)

2. The State of Maharashtra)

3. Iftekar Usman Shaikh)
age 26 yrs. Occu. Service)
residing at 35, Tank Street,)
1st floor, Room No.7,)
Vasilkhan Marg, Nagpada)
Mumbai 400 008.)...Respondents

Mr.Ganesh Gole with R.M.Sawant for petitioner
Mr.D.S.Mhaispurkar, APP for Respondent Nos.1 and 2
Mr.Parvez Ubharay for Respondent no.4

CORAM : R.M.S.KHANDEPARKAR & P.V.KAKADE, JJ.

DATE : 25TH AUGUST, 2005.

ORAL JUDGMENT : (Per Kakade, J.)

1. Both these writ petitions under Article 226 of the Continuation of India are being heard and disposed of by this common judgment, as the facts are interconnected and parties are the same.

. The earlier Writ Petition, being Writ Petition No.2757 of 2004, was filed by one Iftekar in the nature of habeas corpus seeking production of his wife Asra allegedly from the custody of her parents, who are the petitioners in the later Petition being Writ Petition

No.221 of 2005. The said later petition is for quashing of the FIR filed by the said Iftekar at Sir J.J.Marg Police Station, Mumbai allegedly for offences punishable under Sections 170, 420, 365 r/w 34 of the Indian Penal Code.

2. The facts giving rise to both the petitions, in nutshell, are thus -

. Mohd. Ansari has a daughter by name Asra. Mohd. Ansari is a resident of Hyderabad and was living with his family including daughter Asra. Iftekar is resident of Mumbai. About one and half years ago Iftekar had gone to Hyderabad where he met Asra, daughter of Petitioner, in a CAFE where they exchanged their E-mail addresses and thereafter they were regularly in contact with each other and their friendship blossomed into love affair. Iftekar was in Bombay but Asra on his instructions left Hyderabad and came to Bombay on 4.7.2004 without informing anybody and got married with Iftekar. The marriage was registered as per relevant rules on 6.7.2004. Thereafter Asra used to stay with Iftekar at Mumbai. However, it appears from the record that after initial gloss was worn out,

Asra found that the so-called love marriage was in fact a marriage of lust, and craved to break away from Iftekar. In the meantime she contacted her parents and expressed her wish to do so. Finally on 21.12.2004 she left her marital home and went to her parental home at Hyderabad. Iftekar, when he found that Asra had left Mumbai, filed a complaint at J.J.Marg Police Station, Mumbai naming parents and another unknown 9/10 persons alleging that they had impersonated themselves as police officers and took away Iftekar as well as Asra with them in their Car and after some time left Iftekar and took away Asra with them. Though the names of parents of Asra were mentioned in the FIR, admittedly they were not the persons, who allegedly abducted Asra, but it was alleged that there were 9/10 unknown persons who took away Asra allegedly on instructions from parents of Asra i.e. Mohd. Ansari and his wife and hence their names also came to be mentioned in the FIR. On registration of the offence the investigation commenced.

. In the meantime on 4.01.2005 Asra wrote a letter to Inspector of Police, Banjara Police Station, Hyderabad intimating him that she had come to her parental home of her own accord and voluntarily had left

her marital home at Mumbai without informing anyone, as she was not happy there. Asra along with her father's advocate one Mr.Saifuddin went to Banjara Hill Police Station at Hyderabad where her statement was recorded in Crime No.481 of 2004 under missing girl complaint which was lodged by her father wherein she had stated that she was not removed from the house of Iftekar by force, but she had left the said house of her own accord and no one was responsible except herself. Further, one more statement of Asra was recorded under Section 164 of Cr.P.C. before the learned II Metropolitan Magistrate, Hyderabad wherein she reiterated the fact that she had left her marital home voluntarily without any instruction from anybody and had come to her parents of her own accord. The letter was addressed to Inspector of Police, J.J.Marg Police Station, Mumbai on 12.1.2005 intimating them that her father was not responsible for her coming back to Hyderabad and the allegations filed against her father were false.

. On these factual matrix both the Petitions came to be filed. So far as Petition filed by Iftekar for habeas corpus is concerned, after hearing both the sides, we thought it fit to ask Asra, who is a major and

literate woman, to remain present before us for the purpose of interview by us. Accordingly on 16.2.2005 we interviewed her in Chamber alone, as well as in the presence of Advocates from both the parties, as well as the petitioners in both the matters. The result of the interview was recorded by us by detailed order dated 16.2.2005. Asra informed us that she was staying at Hyderabad voluntarily and out of her free will and she was not interested in staying in company of Iftekar and her marriage with said Iftekar was a mistake. She further confirmed that she had given her statement under Section 164 of Cr.P.C. before the learned Magistrate at Hyderabad out of her free will and without any coercion from whomsoever. She was not interested in returning to Mumbai to stay with Iftekar and she wants to reside at Hyderabad without any contact with Iftekar. She has further stated that she had no grudge or complaint against the said Iftekar and, therefore, considering the statement we are satisfied that she arrived at the said decision voluntarily and out of her own free will and without any coercion from whomsoever. We categorically questioned her on various and different aspects and were convinced that there is no case for issuance of any direction or for her production or for sending her to

reside with the petitioner Iftekar. Her statement also discloses that she was residing at Hyderabad out of her free will and without any coercion from whomsoever. Though Iftekar had expressed his desire to talk to her for some time, she had showed her total disinterest for any dialogue with Iftekar but had expressed unwillingness even to talk with him. In view of this position we issued certain directions to the parents of Asra to cooperate with the police in the matter of investigation in the complaint field by Iftekar against them to which they were readily agreed.

. Therefore, so far as earlier Writ Petition No.2757 of 2004 filed by Iftekar for directions and habeas corpus is concerned, the statement of Asra before us coupled with her statement under Section 164 of Cr.P.C. before the Magistrate at Hyderabad and her various letters to police authorities at Hyderabad and Mumbai put an end to the matter and we hold that the said Petition is devoid of merits and therefore, deserves to be dismissed.

3. Turning to the later petition filed by parents of Asra in order to quash the proceeding initiated by

Iftekar against them, it must be noted at this juncture itself that we thought it fit to keep the petition pending on the statement made on behalf of the State that they wanted to make investigation pertaining to offence punishable under Section 170 of the Indian Penal Code in particular, when there was allegation that certain unknown persons impersonated themselves as CID Police Officers and took Asra away. It is needless to mention that so far as Section 420 as well as Section 365 of the Indian Penal Code were concerned, the very foundation on which those were balanced was removed due to Asra's statement and factual aspects narrated by her not only before us but before police authorities at Hyderabad and Mumbai as well as in her statement recorded under Section 164 of Cr.P.C. wherein she has categorically stated that she left Mumbai in a bus going to Hyderabad but she found that her parents left for Gulbarga and therefore, she went there and when she did not find her parents, she returned to Hyderabad and contacted her father's advocate and then finally met her parents. This aspect takes away the element of allegations of cheating as well as kidnapping or abduction by some unknown persons, as alleged in the complaint made by Iftekar.

4. Now coming to the acts of Police Officers at Mumbai, the record shows that time and again they sought adjournment in order to investigate further in the said complaint made by Iftekar. At one stage they also made statement that they wanted to explore possibility of involvement of some hard-core criminals in the said incident. However, inspite of the fact that sufficiently long time was given to the concerned police authorities, not only there was no progress in the investigation but act of police personnel at J.J.Marg Police Station is seen to be conspicuous by total inaction on their part. This is quite obvious, in the light of categorical statement made by Asra to the effect that she alone had left her matrimonial home at Mumbai which fact was also asserted by her in her statement recorded under Section 164 of Cr.P.C. before the learned Magistrate at Hyderabad. No investigation was made in that regard by police at Mumbai, nor any investigation appears to have been made with regard to alleged involvement of 9/10 unidentified persons in alleged incident. It is pertinent to note that no investigation diary was presented before us, nor any progress was shown in investigation and infact a bald

statement was made on behalf of the police authorities that Mohd. Ansari, the petitioner, was not cooperating and hence investigation could not progress any further. However, the entire record speaks quite differently.

5. Meanwhile, we were also informed that the parties had agreed to settle the dispute and minutes of order were also prepared but could not be filed as they sought further time for negotiations. Thereafter Mohd. Ansari, petitioner filed his affidavit on 6.5.2005 before this court stating that before any settlement talks were started, said Iftekar demanded the amount of Rs.20 lacs from him and cautioned him that if the amount is not paid to him he would not discuss any settlement. The affidavit further reads that this demand was made in presence of investigating officer Shri Sunil Bajare. This aspect, on query from the court, was not denied by the investigating officer in the open court, when we asked about its correctness. Considering the statement made by Asra referred to above, the conduct of the complainant Iftekar, and all other facts revealed to the Court narrated above leave no doubt whatsoever that FIR was lodged by said Iftekar on cooked-up story with the sole intention to pressurise the petitioner so that

either Asra could be compelled to go back to Mumbai and reside with him or he be enriched by Rs.20 lacs by her father. This element gains support from total lack of any investigation by the police into the correctness of the allegations made in the FIR regarding involvement of unknown 9/10 persons and so called story of kidnapping or abduction. Therefore, we have no doubt whatsoever that the FIR is lodged with malafide intention to pressurise Mohd. Ansari to send his daughter Asra back to Iftekar. Further, when Asra has categorically made statement before this court as well as at other places that she is not interested in going to Iftekar, then Iftekar wants to capitalise on the issue that he is still married with Asra and then wants to extract amount of Rs.20 lacs from Mohd. Ansari. Therefore, we are of the view that it is classic case of filing of FIR with total malafide intention, which amounts to abuse of process of law.

6. In this regard it must be noted that the exercise of power under Section 482 of Criminal Procedure Code envisages three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to

prevent abuse of the process of court and (iii) to otherwise secure the ends of justice. It is to be exercised that *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse and therefore, it would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the end of justice. In our opinion the present factual aspects involved in the case are fully covered by the view taken by the Supreme Court in the case of **Zandu Pharmaceutical Works Ltd. vs. Mohd.Sharaful Haque** reported in **(2005) 1 SCC 122**. Similarly the Supreme Court has ruled in the case of **State of Orisa vs. Ganesh Chandra Jew** reported in **(2004) 8 SCC 40** that it is no doubt true that at the threshold interference by exercise of jurisdiction under Section 482 of Cr.P.C. has to be in very rare cases, but in fit cases when the court is satisfied that there is evidence of abuse of process of law, then it is cardinal duty of the court to invoke the provision in

order to do justice. Again in the case of **State of Andhra Pradesh vs. Golconda Linga** reported in **(2004) 6 SCC 522** the Apex Court has observed that if on consideration of the allegations in the light of the statement made on oath of the complaint or made in the FIR it appears that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or vexatious, thus proceeding cannot be quashed. However, where it appears to the contrary, interference by High Court in writ jurisdiction would be not only justifiable but would be appropriate and necessary.

. In the present case before us, the lack of evidence inspite of police investigation for several months coupled with the fact that Iftekar had made demand of Rs.20 lacs for settlement in the matter, along with the factual aspects to the effect that Asra has testified before the learned Magistrate at Hyderabad that she had left her house alone and out of her free will, would be sufficient to show that cumulative effect thereof leads to the conclusion that the impugned FIR is malafide and nothing but abuse of process of law, and therefore, has to be quashed.

7. In the result we hold that the Petition No.221 of 2005 deserves to be allowed and stands allowed in terms of prayer clause (a). The FIR in C.R.No.332 of 2004 registered at J.J.Marg Police Station dated 21.12.2004 against the Petitioner is hereby quashed with no order as to costs. Similarly the Writ Petition No.2757 of 2004 also stands dismissed with no order as to costs.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)